

IN THE MATTER OF : HOWARD COUNTY  
CATTAIL CREEK COUNTRY CLUB : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
: BA Case No. 14-021C

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**DECISION AND ORDER**

On August 18, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Conditional Use petition of Cattail Creek Country Club, Inc. (Petitioner) to expand a country club and golf course with a new short game practice facility and other course alterations in an RC-DEO (Rural Conservation: Density Exchange Option) zoning district pursuant to Section 131.0.N.25.

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. No one appeared in opposition to the petition. At the outset of the hearing, Mr. Oh stated the Petitioner agreed with the findings and conclusions of the Technical Staff Report (TSR) and would present no additional evidence.

**FINDINGS OF FACT**

Based upon the TSR, the petition and the Conditional Use Plan, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 4<sup>th</sup> Election District on the west side of MD 97 about 1,200 feet northwest of the Cattail Creek Drive intersection with MD 97. The property is referenced as Tax Map 21, Grid 8, Parcel 211, Part of Parcel B and Part of Parcel 229, Lot 48 and is also known as 3600 Cattail Creek Drive (the "Property").

2. Property Description. The irregularly shaped 106.97-acre Property is the home of the Cattail Creek Country Club, which was established in the early 1990s and approved by the Board of Appeals as a private golf course and country club special exception use in Board of Appeals Case No. 90-02E. It has a golf course, driving range, clubhouse, swimming pool and tennis facility. These principal improvements are located in the eastern portion of the Property, which is accessed from Cattail Creek Drive, a 21-foot roadway that extends about 1,500 feet into the Property. Upon intersecting with Willow Birch Drive, the road becomes a private drive providing access to the swimming pool and tennis courts to the west. The drive then curves to the northeast, past the clubhouse to the northwest, and ends in a large parking lot. The existing outdoor driving range is located at the east end of the parking lot and there is a maintenance building near the northwest corner of the parking lot. The proposed indoor driving range instructional facility would be located southeast of the parking lot (the Site.) There is substantial natural and landscaped vegetation throughout the Property.

3. Vicinal Properties. The Property is well separated from the residential properties to the southwest. The closest adjoining property lies about 140 feet to the north of the Conditional Use Site and this property and other nearby residences are part of the Villas at Cattail Creek age-restricted adult housing development.

4. Roads. MD 97 has two lanes within a variable width right-of-way. At the Cattail Creek/Sycamore Valley Run intersection, the paving is wider to accommodate turning and pass-by lanes.

5. Water and Sewer Service. The Property is served by private well and septic.

6. The General Plan. PlanHOWARD designates the Property as "Rural Resources." The Transportation Map depicts MD 97 as a Minor Arterial and Cattail Creek Drive as a Local Road.

7. Zoning History.

BA 90-02E. Decided June 14, 1990. Special Exception for a private golf course and country club approved. Petitioner: Howard County Country Club, Inc.

BA 11-030C. Decided February 6, 2012. Conditional Use to expand existing country club and golf course with a driving range facility approved. Petitioner: Cattail Creek Country Club, Inc.

8. The Conditional Use Proposal and Site. The proposed Conditional Use site (the Site) comprises 42,246sf, which would extend the existing use area onto adjoining Parcel 229 to the north, in an area northeast of the main parking lot. The Site would accommodate a new short game practice facility with chipping/putting greens and certain alterations of the existing course, including the relocation of two tee boxes for Hole No. 10, which boxes are apparently currently located to the south on Parcel 229, and a new paved cart path section with several golf cart parking spaces. A portion of the existing paved cart path would be removed.

9. Agency Comments. The Health Department's Bureau of Environmental Health (BEH) August 4, 2014 comments include the request that the proposed golf cart path be moved at least 10 feet from the edges of the Villas of Cattail Creek septic reserve area. BEH also

requests the plan show the location of the septic system drainfield laterals, including the turn-ups under turf boxes. It also must include a plan to replace the turf boxes with a sturdier protective device that will allow for access as well as withstand being run over by errant golf carts. Alternatively, the plan should show protective fencing around the septic area near the path and tee boxes. The proposed green permissively overlaps the septic disposal area for the country club.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and background issues, the Hearing Examiner concludes as follows:

##### **I. General Criteria for Conditional Uses (§ 131.0.B)**

**1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

There are no policies which can be directly related to the proposed use.

**2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

Section 131.0.B.2 is an on-site evaluation of the proposed Conditional Use. The Conditional Use Site is proposed to accommodate minor changes to an existing, low-density private recreation use. The Site is extremely small relative to the overall size of the Property. No access changes are proposed. The overall intensity and scale is appropriate.

**3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:**

Unlike ZR §§ 131.0.B.1 and 2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under ZR §131.0.B.3 to establish the proposed use will not have

adverse effects on vicinal properties beyond those ordinarily associated with a golf course country club in the RC zoning district.

a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

There is no evidence of any atypical impact from fumes, odors, vibrations or similar hazards.

b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

No new structures, walls or fences are proposed. There is no evidence of the use hindering or discouraging the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

No new parking areas or driveways are proposed. (Golf cart paths and parking are not regulated under this standard.)

d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

The ingress and egress was approved in BA 90-02E and the proposed expansion does not alter the drives. The TSR considers them to be appropriately located and of adequate size for the proposed expansion.

**e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

There are no known, off-site, environmentally sensitive areas in the vicinity. This section is inapplicable.

**f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

There are no known, off-site vicinal historic sites. The closest historic building is located on the west side of MD 97 on Parcel 4, which fronts on MD 97 and adjoins the Property's south side. On this property is an historic residence known as "By His Grace" (MHT No. 120), the original stone portion of which dates from the late 18<sup>th</sup> century. The Site is more than 1,500 feet from the northwest of this house.

## **II. Specific Criteria for Country Clubs and Golf Courses (Section 131.0.N.25)**

**a. A buffer area at least 50 feet wide will be maintained between structures or parking, loading and storage areas and adjacent residentially-zoned land.**

Because the enlargement and alterations are controlled by one development plan, the required setbacks between Parcel B and Parcel 229 are inapplicable. The Site is about 140 feet from the closest residential property to the north. The petition accords with § 131.0.N.25.a.

**b. A distance of at least 100 feet will be provided between the edge of golf course fairways and existing residential structures.**

This section is inapplicable as no new fairway is proposed.

**c. Outdoor uses will be located and designed to shield residential property from noise or nuisance.**

Although the proposed expansion is for an outdoor use, the distance between the Site and residential properties to the north will buffer these properties from noise or nuisance, in accordance with § 131.0.N.25.c.

**d. Other athletic, recreational or social uses accessory to the principal use, such as typical country club uses, are permitted if approved by the Hearing Authority.**

No such uses are proposed. This section is inapplicable.

**e. For an existing golf course approved prior to October 6, 2013, compliance with Section A and Section B above is only necessary for significant redevelopment of the facility.**

The golf course was approved in 1990 and no redevelopment is proposed. This section is inapplicable.

**f. An existing use approved under the former Special Exception and Conditional Use category for "Country Clubs and Golf Courses" prior to October 6, 2013, shall be considered conforming under the conditions of the original approval. Enlargements and/or extensions to this previously approved use shall only be subject to the general standards and to Section A, Section C and Section D above.**

The petition complies accords with this section.



**ORDER**

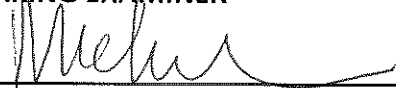
Based upon the foregoing, it is this 9<sup>th</sup> day of September 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Conditional Use petition of Cattail Creek Country Club to expand and alter a country club and golf course with a new short game practice facility and including relocating two tee boxes for Hole No. 10, adding a new paved cart path section with several cart parking and removing a portion of the existing paved cart path, is hereby **GRANTED;**

**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed short game practice facility and other alterations as depicted on the Conditional Use Plan for the "New Short Game Practice Facility" as described in the petition and depicted on the Conditional Use Plan submitted on May 28, 2014 and not to any new structures or uses on the property.
2. Petitioner shall comply with all county and state laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
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Michele L. LeFaivre

**Date Mailed:** 9/15/14

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.